



U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

September 30, 2022

Via ECF

The Honorable Vernon S. Broderick
United States District Court
Southern District of New York
40 Foley Square
New York, New York 10007

Re: *The New York Times Company v. Federal Bureau of Investigation*,
No. 22 Civ. 6589 (VSB) (S.D.N.Y.)

Dear Judge Broderick:

This Office represents the Federal Bureau of Investigation (the “FBI”) in the above-referenced case brought by plaintiff The New York Times Company pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. I write respectfully on behalf of both parties pursuant to the Court’s order dated September 22, 2022, Dkt. No 8.

Because this is an action brought pursuant to FOIA, which in essence seeks review of agency action, the parties respectfully submit that pursuant to Federal Rule of Civil Procedure 26(a)(1)(B)(i) and 26(f), this action is exempt from initial disclosures and the 26(f) conference and report. In addition, the parties understand that pursuant to Local Civil Rule 16.1, this FOIA action is exempt from the requirement of a mandatory scheduling order under Fed. R. Civ. P. 16(b). Accordingly, the parties respectfully request to be relieved from the obligation under the Court’s September 22 order to provide a case management plan in this matter, which we understand to be designed to fulfill that requirement. Moreover, the parties respectfully submit that such a scheduling order is unnecessary because the parties expect that this matter, like most FOIA matters, will be resolved either consensually by the parties or through motions for summary judgment without discovery. *See Wood v. FBI*, 432 F.3d 78, 85 (2d Cir. 2005); *Carney v. U.S. Dep’t of Justice*, 19 F.3d 807, 812 (2d Cir. 1994).

The parties submit the following information, pursuant to the Court’s initial conference order:

1. **Brief statement of the case.** This is an action under FOIA, seeking the production of documents that The New York Times Company requested from the FBI in a FOIA request dated September 3, 2021 (the “Request”). The Request sought documents related to the investigation into the Clinton Foundation, such as electronic cables and correspondence regarding the investigation, including the decision to transfer the investigation to/from Little Rock, Arkansas, among other records. Once the FBI has completed its search for records and made any appropriate productions of responsive records, the adequacy of the FBI’s search for records responsive to the Request and the propriety of FOIA withholdings will likely be the central issues in dispositive motions, if the action is not resolved consensually.

2. **Basis of subject matter jurisdiction and venue.** The New York Times Company alleges in the complaint that jurisdiction and venue are proper in this Court under 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B), on the ground that The New York Times Company's principal place of business is in this district. Dkt. No. 1 ¶¶ 4-5.

3. **Motions.** There are no pending motions or applications expected to be made at this time. The parties anticipate that once production of responsive records is completed, summary judgment motions concerning the FBI's response to the Request and/or assertion of FOIA exemptions may be necessary to resolve the action, if it is not resolved consensually.

4. **Discovery.** No discovery has taken place in this matter. Because this is a FOIA case, discovery is "generally . . . unnecessary," *Carney*, 19 F.3d at 812, and the parties do not anticipate engaging in any discovery at this time.

5. **Settlement discussions.** While the parties have not yet engaged in settlement discussions, we anticipate that we will engage in discussions about the schedule for the FBI to process records responsive to the Request, about the search the FBI conducts to locate records responsive to the Request, and about the application of FOIA exemptions to any responsive records, as the case proceeds.

6. **Estimated length of trial.** The parties anticipated that this matter will be resolved through summary-judgment practice, if it is not resolved consensually.

7. **Other information.** Since the filing of this action, the FBI has completed its initial search for records responsive to the Request. To date, approximately 1,400 pages of potentially responsive records have been located. The FBI recently assigned those records to be processed and intends to process them at a rate of 500 pages per month, with productions beginning on January 17, 2023, and continuing the 15th of each subsequent month until production is complete.

If the parties are unable to resolve a dispute that arises in the course of the response to the Request, we will promptly present our respective positions to the Court for resolution. We thank the Court for its consideration of this matter.

Respectfully submitted,

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Southern District of New York

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